Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-1267

IN THE
SUPREME COURT OF THE UNITED STATES

_____ Term, 198_

MARCUS ARDREY, et al.,
individually and on behalf
of all others similarly situated,

Petitioners,

v.

UNITED PARCEL SERVICE,
a corporation,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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I. QUESTION PRESENTED FOR REVIEW

Whether the district court abused its discretion in deferring some of Petitioners' requested pattern and practice discovery as burdensome until such time as Petitioner established his or her individual claim.

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III. TABLE OF AUTHORITIES

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IV. STATEMENT OF THE CASE

The Petitioners filed a complaint alleging race discrimination in respect to their individual claims. [1] They also alleged, on information and belief, that racial discrimination was the standard operating procedure of UPS in the discipline, promotion and transfer of employees (273A-275A). Petitioners served four sets of interrogatories and three requests to produce documents upon the Respondent. After serving their second set of interrogatories, Petitioners moved that the district court defer ruling on their class certification motion whereupon Respondent moved that class action

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[1] One Petitioner also alleged sex discrimination and another age discrimination.

pattern and practice discovery unrelated to Petitioners' individual claims be deferred. The district court granted both motions. Respondent answered most of the interrogatories, produced practially all of the requested documents but objected to answering certain interrogatories seeking extensive information on thousands of employees (248A). Petitioners filed three motions to compel answers to the interrogatories and later a motion for the district court to reconsider its rulings on those three motions. The district court denied Petitioners' motions and, as it did on Respondent's motion to defer class pattern and practice discovery, limited initial interrogatory discovery to the Petitioners' individual claims,

including statistical and related data relevant to their individual claims. (9A-11A).

At the trial on the merits the thirteen Petitioners and six other employees testified about alleged racial discrimination. The district court in a detailed decision and order dismissed all of the Petitioners' claims and did not find a single instance of racial discrimination. (30A-230A). In its order the district court ordered the parties to meet, prepare and submit a proposed schedule to the Court with respect to the outstanding class certification motion. Petitioners did not propose any schedule so final judgment was entered dismissing the action. (235A).

Petitioners appealed to the Fourth Circuit Court of Appeals claiming that

the district court abused its discretion in initially limiting the scope of the Petitioners' interrogatories. The Court of Appeals found no abuse of discretion. It noted that Petitioners contended:

> "They were restricted to discovery on their individual claims and were not allowed to get discovery 'regarding groups of classes of employees, unless such discovery would produce information relevant to the individual claims.'".

but found:

> "However, the district court did allow discovery as to information regarding others similarly situated to the individual plaintiffs." (24A).
>
> * * *
>
> "The discovery allowed as to their individual claims was sufficient to develop evidence, statistical and otherwise, relating to whether discrimination was the 'standard operating procedure' of UPS in regard to their positions, or concerning promotions, transfers, suspensions or discipline, related to their individual claims." (26A)

V. ARGUMENT

The Petitioners argue that certiorari should be granted because the decision of the Fourth Circuit conflicts with decisions in other circuits - Diaz v. AT&T, 752 F.2d 1356, 1362-1364 (9th Cir. 1985); Trevino v. Celanese, 701 F.2d 397, 404-408 (5th Cir. 1983); Rich v. Martin-Marietta, 522 F.2d 333, 342-349 (10th Cir. 1975); and Burns v. Throkol Chemical Company, 483 F.2d 300 (5th Cir. 1973). The cases relied upon by Petitioners to show a conflict between the circuit courts of appeal involve a difference in results because the facts and circumstances of the the cases differ but do not involve any difference as to the applicable law or standard for discovery.

In Diaz, supra the district court granted summary judgment for the defendant finding it unnecessary to rule on plaintiff's discovery request for statistical data to support his individual case. The Ninth Circuit reversed the basis for the summary judgment and since no ruling had been made on the discovery request could not review the record to determine if there was any other basis for sustaining the summary judgment. The Ninth Circuit found that plaintiffs' request for regional statistical evidence was relevant to plaintiff's claim.

The district court in its first discovery order in the case at bar specifically provided:

> "As a guideline, the parties are advised that discovery at this time will not be allowed as other individuals who are not presently plaintiffs of record, or to statistical information regarding groups or classes of employees unless such discovery would produce information relevant to the individual claims." (239A - emphasis added).

In its second order the district court noted:

> "This Court has not limited class-wide discovery as to the plaintiffs' individual claims." (242A).

There is no question that Respondent produced statistical evidence, as requested by Petitioners. (See for example 211A-213A).

The Fourth Circuit considered Diaz and concluded in the case at bar that "the district court did allow discovery as to information regarding others similarly situated to the individual plaintiffs", citing several examples. (22A-24A).

In Diaz the district court made no ruling on the discovery request for statistical information. In the case at bar the district court ruled that statistical information relevant to plaintiff's individual claims was discoverable. The Fourth Circuit agreed with the Ninth Circuit that statistical information was relevant to plaintiffs' individual claims. There simply is no conflict between these two circuits on the basic rule of law governing discoverable statistical information in a race discrimination action.

In Trevino, supra the Fifth Circuit reversed summary judgment for the defendant finding that there was a material issue of fact on whether the two defendants constituted a single employer. Since the discovery order

precluded obtaining information on the integrated defendants' promotion and transfer system it was vacated. The Trevino Court in a footnote stated:

> "Should the discovery Trevino seeks on remand prove unduly expensive and burdensome, defendants may request an appropriate order limiting discovery." Trevino, supra at p. 406.

In the case at bar the district court deferred certain discovery as burdensome but allowed discovery that would permit Petitioners to develop evidence in support of both their legal theories. As the Fourth Circuit stated:

> "The discovery allowed as to their individual claims was sufficient to develop evidence, statistical and otherwise, relating to whether discrimination was the 'standard operating procedure' of UPS in regard to their positions, or concerning promotions, transfers, suspensions or discipline, related to their individual claims."

The Fourth Circuit cited Trevino with approval for the proposition that "undue restrictions of discovery in Title VII cases are 'especially frowned upon'". (22A). Again there is no conflict between these circuits on the applicable rule of law or standard for discovery in Title VII cases.

Likewise, the Fourth Circuit cited with approval Rich, supra for the proposition that discovery restrictions are dictated "only by relevance and burdensomeness". (22A). In Rich the Tenth Circuit reversed the judgment of the district court and inter alia directed the district court to reconsider plaintiffs' request for discovery. In Rich, supra the Tenth Circuit observed at p. 345:

> "Under the facts and circumstances of this case, taking into account that defendant was allowed to defend with plant-wide statistics, the relevance of the information sought by the plaintiffs both in support of their initial case and for the purpose of rebuttal has a high degree of relevance and cannot be ruled out as burdensome."

Rich, supra involved application of discovery law to the particular facts and circumstances of that case. The Fourth Circuit applied discovery law to the particular facts and circumstances of the case at bar. That the two circuit courts reached different results in the application of the law to differing facts and circumstances hardly constitutes a conflict between the circuit courts.

Since there is no conflict between the circuit courts on applicable law, Petitioners' basic contention appears to be that they are entitled to all their

requested discovery based on their legal theories and that a district court may not exercise any discretion to limit or defer that discovery for any reason. The Federal Rules of Civil Procedure and the case law provide to the contrary.

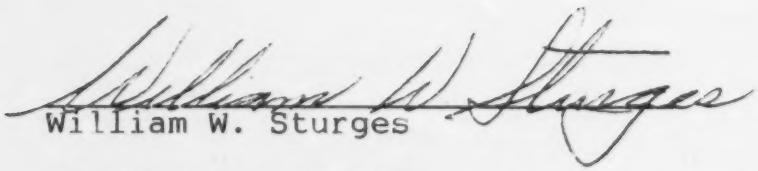
If Petitioners' contention is not as broad as the proposition stated above, then Petitioners are asking this Court to grant certiorari to review the Fourth Circuit's decision on whether the district court abused its discretion under the facts and circumstances of this particular case - to repeat the process performed by the Fourth Circuit Court. Supreme Court Rule 17 does not contemplate the grant of certiorari to review the decisions of circuit courts in such circumstances.

We have not found the Fourth Circuit decision cited in any federal case.

VI. CONCLUSION

Since the decision rendered by the Fourth Circuit in the case at bar is not in conflict with the decision of another court of appeals on the same matter, Petitioners' request for certiorari should be denied.

Respectfully submitted, this the 3rd day of March, 1987.



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VII. CERTIFICATE OF SERVICE

The undersigned, a member of the bar of the United States Supreme Court, certifies that the requisite number of copies of the foregoing RESPONSE TO PETITION FOR WRIT OF CERTIORARI thereto were served on

Mr. Michael A. Sheely
Russell & Sheely
418 Law Building
730 East Trade Street
Charlotte, North Carolina 28202

by depositing same in the United States Mail, in an appropriately addressed and stamped package on March 3rd, 1987.

William W. Sturges